UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	)	**MDL No. 1456**
	)	**CIVIL ACTION: 01-CV-12257-PBS**
THIS DOCUMENT RELATES TO ALL CLASS ACTIONS.	)	**Judge Patti B. Saris**

PLAINTIFFS' REPLY TO WATSON PHARMACEUTICALS, INC.'S RESPONSE TO COURT ORDER REGARDING DISCOVERY SCHEDULE

Plaintiffs respectfully submit this Reply To Watson Pharmaceuticals, Inc.'s Response to Court Order Regarding Discovery Schedule.

I. Introduction

Defendant Watson Pharmaceuticals, Inc. ("Watson") has diverged from the majority of the Track II Defendants, by proposing -- for itself only -- a substantially shortened discovery schedule, which, if adopted, would severely prejudice plaintiffs' ability to prosecute their case against Watson.[1] For example, in its submission to the Court, Watson contends that the Court should impose a December 16, 2005 deadline for Watson's production of documents and electronic data, even though Watson will be unable to meet such a deadline.[2] Even more significant for purposes of this Reply, Watson seeks to impose an unreasonably short deadline of January 13, 2006 for plaintiffs

[1] By way of reference, Plaintiffs hereby incorporate the arguments and schedule set forth in Plaintiffs' Memorandum Regarding Schedule for the Track II Defendants filed with this Court on December 9, 2005.

[2] Defense counsel recently has stated that he intends to produce e-mails and other electronic documents after December 16, 2005. Watson also still has not produced all necessary, responsive electronic sales data for all relevant drugs.

to complete their fact discovery against Watson. Thus, even if Watson were to complete its electronic and hard copy production by its proffered deadline of December 16, plaintiffs would have less than four weeks, during the heart of the winter holiday season, to organize and review Watson's production for any substantive gaps, as well as to identify, notice and complete all current and ex-employee depositions.

Watson contends that it is entitled to impose such unreasonable deadlines due to its purportedly "tremendous effort to provide discovery" prior to December 3, 2005. Defs' Br. at 2. However, despite defendants' contention otherwise, the record shows that Watson's production efforts, prior to the last two weeks of November 2005, have been minimal, at best. Accordingly, Watson's discovery proposal should be denied.

II. Argument

Until very recently, Watson's efforts to produce responsive discovery have been severely deficient. More specifically, as defendant concedes at page 3 of its brief, the majority of Watson's document production was made in December 2002. However, that production was limited to productions made in earlier government investigations relating mainly to three drugs, namely Buspirone, Doxazosin and Oxycodone, which have never been at issue in this action.

Plaintiffs subsequently served Watson with several requests, including: Plaintiffs' Omnibus Requests for Production and Interrogatories to Defendants dated March 31, 2004; and, Plaintiffs' Request for Production to Defendants Regarding HHS ASPs, dated May 26, 2004. These requests sought responsive documents for 17 Watson drugs, and sought numerous document categories beyond the scope of Watson's earlier government productions. However, Watson all but disregarded plaintiffs' requests for production,

and prior to the last two weeks of November 2005, merely produced copies of select business plans, document retention policies, organizational charts and some sales and pricing information. This is particularly troubling because in response to a follow-up letter from plaintiffs seeking documents identified at 30(b)(6) depositions, Watson agreed in a November 24, 2004 letter to make a substantial supplemental production of documents. In short, the overwhelming majority of documents produced by Watson prior to November 2005 were merely copies of documents responsive to earlier investigations, but not responsive to plaintiffs' specific requests.

In early November 2005, plaintiffs' counsel wrote a letter to defense counsel demanding the production of all outstanding discovery. Even though Watson had an ongoing duty to produce documents without prodding from plaintiffs, it finally commenced producing thousands of pages of responsive documents in mid-November 2005. In light of its own delay, Watson's frenzied efforts to produce such documents certainly does not justify its prejudicial discovery schedule. According to its own submission, Watson dropped more than 10,000 pages of documents, more than a third the size of its entire prior production, on plaintiffs in the last two weeks of discovery, from November 18, 2005 through November 29, 2005. See Defs' Br. at 3. In fact, many of the documents produced during that period were literally produced just prior to or during depositions of Watson employees. Thus, by the time plaintiffs received such documents, they could not even timely serve subpoenas on ex-employees prior to the discovery deadline.

Clearly, Watson's November 2005 strategy was to appear to make substantial efforts to provide requested discovery in order to claim that plaintiffs waived their

opportunity to take discovery. However, Watson could not even achieve its aims as is evidenced by the fact that numerous documents and data remain outstanding. For example, defense counsel has stated that approximately 9,000 pages of e-mails and electronic documents are yet to be produced. Watson also has not produced all of the requested data necessary for plaintiffs' expert to calculate damages, and even refuses to produce data for Lorazepam, a drug identified at Appendix A of the Third Amended Complaint, on the grounds that the drug is identified only in the tablet form rather than the injectible form, even though this Court, in CMO # 10 already clearly stated that "[t]he identification of a drug as a Phase I Drug pursuant to this paragraph shall include **all NDCs for that defendant's product** set forth in Appendix A to the AMCC." (Emphasis added.) Watson should not be rewarded for producing agreed to materials at the eleventh hour of discovery.

The Court also should be aware that for most of the discovery period, Watson misinformed plaintiffs regarding the reimbursement of their brand name drugs, INFeD and Ferrlecit. Approximately a year and a half ago, on July 14, 2004, during Watson's 30(b)(6) deposition, the designee, Timothy Callahan, Vice President of Sales and Marketing who has been with defendant companies since 1993 and who has knowledge relating to INFeD and Ferrlecit (*See* Callahan 7/14/04 Dep. at p. 7 attached hereto as Exhibit A) was questioned by plaintiffs' counsel, Rachel Kopp, as to whether such drugs have been reimbursed under Medicare Part B:

Q: Okay. So INFeD and Ferrlecit, they are reimbursed by Medicare Part B, correct?

A: No.

Q: They're not?

A: (Witness nods.)

Q: Does Watson market any brand drugs that are Medicare Part B drugs?

A: Not that I would know of, I'm only familiar in terms of the overall structure with our products in my division.

See Callahan 7/14/04 Dep. at pp. 28-29 attached hereto as Exhibit A. Mr. Callahan did not correct his testimony that day nor on the following day during his continued 30(b)(6) deposition. Even though defense counsel must have known that Mr. Callahan's response was incorrect, they never made any effort to correct the incorrect statement. Rather, it was not until Mr. Callahan was deposed again as a fact witness on November 29, 2005, nearly a year and a half later, that he finally admitted that both INFeD and Ferrlecit were indeed reimbursed under Medicare Part B.

Because Watson still has not yet: (i) produced a single e-mail or memo outside of those produced in response to government subpoenas; (ii) completed its hard copy or electronic data productions; and (iii) only began producing substantially responsive documents to plaintiffs requests during the last two weeks of November 2005, its proposed discovery schedule and attempt to preclude plaintiffs from deposing additional witnesses should be denied.

III. CONCLUSION

For all of the foregoing reasons, defendant Watson Pharmaceuticals, Inc.'s Response to Court Order Regarding Discovery Schedule should be denied.

Respectfully submitted,

Dated: December 15, 2005

By: /s/ Allan M. Hoffman

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CERTIFICATE OF SERVICE

I hereby certify that I, Allan M. Hoffman, an attorney, caused a true and correct copy of the foregoing, **PLAINTIFFS' REPLY TO WATSON PHARMACEUTICALS, INC.'S RESPONSE TO COURT ORDER REGARDING DISCOVERY SCHEDULE** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 15, 2005, a copy to LexisNexis File & Serve for Posting and notification to all parties.

/s/ Allan M. Hoffman
Allan M. Hoffman

Attorneys for Plaintiffs

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456
This Document Relates To: ALL ACTIONS	01-CV-12257-PBS

HIGHLY CONFIDENTIAL

Wednesday, July 14, 2004
New York, New York
3:58 p.m.

Deposition of TIMOTHY CALLAHAN, held at the offices of Cohen, Tauber, Spievack & Wagner, LLP, 420 Lexington Avenue, New York, New York, pursuant to 30(b)(6) Notice, before Josephine H. Fassett, a Certified Shorthand Reporter and Notary Public of the State of New York.

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mean when you nod, the court reporter can't understand that, so we need a Yes or a No.
A Okay.
Q So, first, I would like to show you what we have marked here as Exhibit 1.
If you could just take a look at that. And that's the Notice that we're going to be talking about today that you're here in reference to.
Do you feel confident that you can, at least to the best of your knowledge, tell us about these Areas of Inquiry for the brand drugs at Watson?
A Yes.
Q Okay. First of all, can you just tell us first the two brand drugs are Ferrlecit --
A Right.
Q -- and INFeD, correct?
A Yes.
Q And does Watson have any other brand drugs?

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A Yes.
Q Okay. And, first, how long have you been at Watson?
A Approximately four years.
Q And have you always been in the same position?
A No. No.
Q Okay. What position did you hold before?
A I started with Watson as Director of Marketing and then was Executive Director of Marketing and now to the current position which is Vice President of Sales and Marketing.
Q Okay. And what year did you start as Director of Marketing?
A That would have been 2000.
Q Okay. And before Watson what did you do?
A I worked for Schein Pharmaceutical.
Q Okay. And when did you start with Schein?

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A August 1993.
Q Okay. And what was your role there when you first started?
A Sales representative.
Q And then where did you go from sales representative at Schein?
A Sales training.
Q Okay. And then where?
A To marketing, associate product manager.
Q Okay. And from there?
A To product manager.
Q Okay. And what year was that, if you remember?
A Gosh, it was probably 1997 or so.
Q Okay. And then from there were you product manager when Schein was acquired by Watson?
A Was director of marketing when Watson acquired Schein.
Q Okay. And did you stay on as director of marketing at Watson?

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A Yes.
Q Okay. So first let's just talk about director of marketing at Schein.
What were you responsible for as director of marketing at Schein?
A Managing the overall strategy and tactics associated with the two products INFeD and Ferrlecit.
Q Exclusively for those two products was your main responsibilities?
A Yes.
Q You said strategy and tactics, what exactly does that entail?
A Strategy would be things such as what is the best way to position our product, which clinical aspect should we focus on.
Tactics would be things like a journal advertisement, a detail aid for a sales representative to carry with them.
Q Okay. And when you're talking about positioning the products, where did you position them, in what respect were you in

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for the business because as we look at Ferrlecit and INFeD, they're both iron, so we kind of looked at that as one product across a continuum.
Q But they would differentiate within the market plan, let's say, if there was a difference between the INFeD target or the Ferrlecit target?
A If there was one in there, yes, it would be there.
Q Were those marketing plans, were they for the nephrology division or were they for just iron replacement?
A The nephrology division.
Q Okay. Did iron replacement have its own marketing plan?
A No, one is really the other --
Q Okay.
A -- in terms of the way it was looked at.
Q Are there any other drugs in the Nephrology Division other than INFeD and

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Ferrlecit?
A Yes.
Q And what might they -- what other drugs would they be?
A There is a small line of renal vitamins.
Q So they would also probably be addressed in the marketing plans?
A No.
Q Did they have their own marketing plans or was it just not applicable?
A No.
Q And how often did those marketing plans come out, were they regularly?
A Usually once per year.
Q And what types of information might they discuss about INFeD and Ferrlecit?
A Target customers, budgets, forecasts, tactics, strategies.
Q And who drafted those marketing plans?
A The Product Management Team.

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Q And who approved those marketing plans?
A To the extent that they were approved it would be a management committee.
Q Okay. And then what was done with them, I mean, were they presented to anyone?
A To the management committee they were presented.
Q Okay. And then once the management committee, I guess, approved them, as much as they did approve them, then what happened to the marketing plans?
A It would be executed by the Product Management Team and sales force and whoever else was a part of that.
Q Okay. And that's still just for the Nephrology Division?
A Correct. I can't comment specifically for the other groups as I'm not as familiar with what they would do.
Q Okay. So INFeD and Ferrlecit, they are reimbursed by Medicare Part B, correct?

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A No.
Q They're not?
A (Witness nods.)
Q Does Watson market any brand drugs that are Medicare Part B drugs?
A Not that I would know of, I'm only familiar in terms of the overall structure with our products in my division.
Q Okay. Now, you said that ultimately the Brand Division reports to a COO, correct?
A Correct.
Q And do you use any of the same documents, let's say, business plans, company-wide policy, anything to share any of that with the generic side?
A No.
Q None? You have all your own policies, procedures, et cetera?
A Policies and procedures for general business activities and, again, expense report and things like that would be Watson wide